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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
in the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable James B. Jackson, Jr., Master-in-Equity

Appellate Case No. 2024-000642

Kacey Green and Charinrath Green, ... Respondents,

v.

Mervin Lee Johnson, ... Petitioner.

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION TO SUPPLEMENT THE RECORD WITH FULL DAMAGES HEARING TRANSCRIPT

Respondents (the "Greens") moved to supplement the record on appeal with the entire transcript of the May 22, 2019, damages hearing before Master-in-Equity James B. Jackson, Jr. The Court should deny this motion because of its long-standing policy not to consider any fact which does not appear in the Record on Appeal. Moreover, the Greens failed to submit any Record on Appeal to the Court of Appeals and never identified the hearing transcript in their Designations of Matters.

It is apparent from the Greens' motion that they want this Court to consider the evidence of injuries they allege resulted from this motor vehicle collision presented at the default damages hearing before the Master. As became apparent to counsel for the Greens in the oral argument on

June 3, 2025, other than recitations of the Greens' medical bills in the Master's damages order, there is no evidence of damages in this record. Given that the Master awarded $1,760,000.00 in default damages, some evidence justifying this exorbitant sum would seem critical to the Greens' appeal from the later reduction of that award to $250,000.00. Yet they never included such evidence in the record.

"Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR. "Appellant had the burden of providing a sufficient record." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487–88 (2005) (declining to consider the appellant's argument that an improper jury charge entitled it to a new trial because the charge was not in the record on appeal); s*ee Germain v. Nichol,* 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983) (holding that the appealing party has the burden of providing a sufficient record).

The Master's original damages order justified the $1.76M award based on the Greens' "uncontested medical bills of $12,826.00; and the additional evidence presented at the hearing." (App. p. 9). This Court must determine, on the basis of the record, if the Master abused his discretion by awarding this sum without evidentiary support. *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006). Significantly, despite the absence of portions of the hearing transcript, the propriety of the Master's damages award is squarely before the Court because the June 5, 2019, order is in the record. This is because "a judgment is effective only when reduced to writing and entered into the record." *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) (concluding that although the record on appeal included the full transcript of the trial court's hearing, the appellant's failure to include the final order in the record was fatal to the appeal). Accordingly, the damages hearing transcript is not necessary for

the Court's evaluation of the Master's excessive damages award.

The Greens cannot establish their entitlement to supplement the record at this late hour. This is particularly true because the Greens never submitted a Record on Appeal in this case, despite the clear instruction of Rule 210(a), SCACR. "Because court rules require the appealing party to prepare the record on appeal, South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record on appeal for review." *Johnson*, 372 S.C. at 283, 641 S.E.2d at 897 (citing Rule 210(a), SCACR).

Compounding this error, the Greens did not identify the damages hearing transcript in their initial Designation of Matter, which was filed with the Court of Appeals on December 18, 2020. Exhibit A. In contrast, Johnson identified[1] the transcript in his initial Designation of Matter filed in January of 2001. Exhibit B. The Greens did not correct their omission in either of their subsequent designations filed July 28, 2021, and August 27, 2021.[2] Exhibit C. After Johnson submitted his Record on Appeal[3] on October 18, 2021, the Greens did not move, as provided for in Rule 212, SCACR, for leave of court to supplement the record with the excluded portions of the damages hearing transcript. Because they never submitted a Record on Appeal, and because they failed to identify the transcript despite multiple opportunities to do so, the Greens have failed to demonstrate their entitlement to supplement this record.

If the Court decides, however, to grant Respondents' motion to supplement the record, it should only permit the addition of portions of the transcript addressing the issue of the Greens' personal injury damages. The transcript includes testimony related to the Greens' alleged lost wage

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[1] Johnson's Designation erroneously identifies the hearing date as June 5, 2019, instead of May 22, 2019.

[2] The Greens' last Designation of Matters was filed to identify the Master's Form 4 Order denying the Greens' Motion for Reconsideration.

[3] As a cross-appellant, Rule 210 obligated Johnson to submit a Record on Appeal.

damages. The Master never awarded the Greens damages for lost wages and they never challenged that omission. Respondent Kacey Green testified that he missed work as an Uber driver, which he attributed to the accident giving rise to this appeal. Exhibit A to Respondent's Motion, at 32:7-37:21. Similarly, Charinrath Green testified that she quit work as a waitress due to headaches she attributes to the collision. *Id*., at 57:9-59:2. Because the Greens' lost wage claims are not before this Court, these portions of the transcript should not be included with any supplemented record.

Conclusion

The Greens' motion seeks leave of Court to amend the Record on Appeal four-and-a-half years after they first omitted the default damages hearing transcript from their Designation of Matters. South Carolina courts have long counseled appellants of the strict requirement to include pertinent matters in the record or risk waiving any challenge on appeal. There is no exception to the rule in this case. The Court should deny Respondent's motion and consider the merits of Johnson's challenge to the Master's patently excessive damages order on the established record.

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